ward increased. The agent found a purchaser and gave a contract to sell. Five days previous, no notice of revocation having been given to the agent, the principal had sold the property and given a deed which was recorded two days before the attempted sale by the agent. For failure to execute a deed the agent's vendee brings an action for damages against the principal. *Held*, that the plaintiff cannot recover. *Donnan* v. *Adams* (1902), — Tex. —, 71 S. W. Rep. 580.

Two reasons were assigned by the court: (1), that the agent had authority only to find a purchaser, not to give a contract, and (2), in any event, the record of the deed to the purchaser was constructive notice of revocation of the agent's authority, under the statute providing that record of such an instrument should be taken "as notice of its existence to all persons." In support of the rule that authority to sell does not include authority to give a contract, but only to find a purchaser, the court cites *McCullough* v. *Hitchcock*, 71 Conn. 401, 42 Atl. 81; *O'Reilly* v. *Keim* (N. J.), 34 Atl. 1073; *Carstens* v. *McReavy*, 1 Wash. 359, 25 Pac. 471. Such authority might be granted by the express terms of the contract of agency or be inferred from the powers given, or the peculiar circumstances of the case. *Lyon* v. *Pollock*, 99 U. S. 668, 25 L. ed. 265; *Hunter* v. *Eastham* (Tex.), 67 S. W. 1080. An agency may be terminated by the destruction of the principal's interest in the subject matter,—and notice to the vendee before the attempted purchase will prevent his recovery. *Torre* v. *Thiele*, 25 La. Ann. 418; *Walker* v. *Dennison*, 86 Ill. 142; *Simonton* v. *First Nat. Bank*, 24 Minn. 216. It may be terminated by a dealing with the subject matter in a way inconsistent with the continued existence of the agency. *Aiken* v. *Taylor* (Tenn.), 62 S. W. 200. That record is not notice to all the world see *Maul* v. *Rider*, 59 Pa. St. 167. It has been held under the statutes of another state that notice by record does not operate as against the agent, merely against subsequent purchasers and creditors. *Loehde* v. *Halsey*, 88 Ill. App. 452. Under some statutes record of the revocation of a power of attorney is held to constitute notice without actual notice to the agent or those who had previously dealt with him. *Arnold* v. *Stevenson*, 2 Nev. 234.

AGENCY—GOOD FAITH—COMMISSIONS.—H was employed by the defendant to secure contracts for the installation of elevators. The agent was to have all he could obtain over a certain minimum price. This minimum he afterwards induced the defendants to decrease several thousand dollars by representations of competition. The agent finally concluded a contract at a price much greater than the original minimum fixed by the defendants. In an action brought by H's executor for his commissions under the modified contract of agency, the defendant asked the court to instruct the jury, that if the representations which induced this modification were to the knowledge of H false, and were of a kind to mislead and deceive a person of ordinary prudence, and if such representations did actually deceive and induce the defendant's manager to modify the original contract, then the plaintiff could not recover anything for the services of H. The court changed the instructions so as to make them read that the plaintiff could not recover the amount of the reduction so obtained, but merely whatever the agent could obtain above the price originally fixed upon. *Held*, that the instructions as given by the trial court were correct, and that the judgment should be affirmed. *Hale Elevator Co.* v. *Hale* (1903), — Ill. —, 66 N. E. Rep. 249.

Perhaps the distinction may be drawn between those cases in which commissions under the original contract are allowed to the agent, and those in which he is deprived of all rights under the contract because of bad faith, on the ground that in the former cases the agent at the time he acts in bad faith is

to the knowledge of the principal acting adversely, i. e. when he is seeking to have his commissions increased; while in the latter he uses bad faith in matters where the principal has a right to rely upon the agent's good faith and identity of interest. None of the cases seem to recognize such a distinction. The following are cases in which commissions were denied altogether: *Wadsworth* v. *Adams*, 138 U. S. 380; *Prescott* v. *White*, 18 Ill. App. 322; *Vennum* v. *Gregory*, 21 Ia. 326; *Blair* v. *Shaeffer*, 33 Fed. 218; cf. 1 AM. & ENG. ENC. OF LAW 1102; In the following cases commissions were given under the original contract:—*Neilson* v. *Bowman*, 29 Gratt. 732 (cited by the court); *Ballenger* v. *Wilson*, 53 Atl. 488, 1 MICHIGAN LAW REVIEW, 505. Similarly it has been held that if an employer *knows* of the agent's adverse interest at the time the agent was employed, he must pay the agreed compensation, *Wright* v. *Welch*, 3 McArthur (D. C.) 479.

BANKRUPTCY—INTENT OF INSOLVENT.—The Bankruptcy Act of 1898 provides that "acts of bankruptcy by a person shall consist of his having, (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having, at least five days before a sale or final disposition of any property affected by such preference, vacated or discharged such preference." A corporation, without any intent to create a preference, failed to cause a preference to be vacated or discharged. *Held*, that the intent of the insolvent is immaterial, and that the corporation had committed an act of bankruptcy. *White* v. *Bradley Timber Co.* (1902), 119 Fed. Rep. 989.

This provision of the act of 1898 differs from the corresponding provision of the act of 1867, in that it substitutes the word "permit" for "procure." Under the old act it was held, in *Wilson* v. *Bank*, 17 Wall. 473, 21 L. ed. 723, that an intent to create a preference was essential to the commission of an act of bankruptcy under this clause; but on account of the fact that the statute has been changed to read "permit and suffer," instead of "procure and suffer," some courts have held that the decisions under the old law are inapplicable, and that the change in the wording should be taken as significant of an intent to make the result obtained by the creditor, and not the intent of the insolvent, the essential ingredient. The best opinions to this effect are: *In re Meyers*, 1 Am. Bank. Rep. 1; *In re Reichman*, 91 Fed. 624, 1 Am. Bank. Rep. 17; *In re Moyer*, 93 Fed. 188, 1 Am. Bank. Rep. 577; *Mfg. Co.* v. *Stoever*, 97 Fed. 330, 3 Am. Bank. Rep. 220, 7 Am. Bank. Rep. 142; *In re Thomas*, 103 Fed. 272, 4 Am. Bank. Rep. 571. Subsequent to the cases just cited, this question came before the circuit court of appeals, *Duncan* v. *Landis*, 106 Fed. 839, 5 Am. Bank. Rep. 649, and Mr. Justice Gray, in a long and comprehensive opinion laid down the contrary rule, holding that in order to constitute an act of bankruptcy, there must be some act on the part of the debtor, either by way of active procurance or voluntary acquiescence, arising from connivance, coöperation, or participation. This opinion was rendered on February 7, 1901. On December 9, 1901, a case precisely parallel to *Duncan* v. *Landis*, came before the supreme court of the United States, and Mr. Justice Gray delivered the opinion of the court. This opinion, exactly the reverse of that in *Duncan* v. *Landis*, holds that no intent on the part of a bankrupt to create a preference, is necessary to constitute an act of bankruptcy. *Wilson* v. *Nelson*, 183 U. S. 191, 7 Am. Bank. Rep. 142. Four judges concurred in a dissenting opinion. Although there is much reason in, and many good arguments for, the doctrine in the principal case, it must, in view of the strong opinion in *Duncan* v. *Landis*, and the strong dissenting opinion in *Wilson* v. *Nelson*, be denied the clear weight of authority that it claims.